HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Government Appeal No. 165 of 2004

Date of Decision : 26th April, 2006

A.F.R. (Approved for reporting)

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~~Not approved for reporting.~~

Date 26.4.2006 Initial of Judge.

Note : Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Government Appeal No. 165 of 2004

State of Uttaranchal ….Appellant

Versus

Mohd. sayed @ Abdul Sattar
S/o Gulam Mohd R/o Pakistani National …… Respondent

Shir A. Rab Addl. G.A. for the Stated
shri Vivek Shukla, learned Counsel for the respondent

Hon'ble J.C.S. Rawat, J.

This appeal has been directed against the judgment and order dated 09.03.2004 passed by the learned Additional Sessions Judge/I F.T.C., Haridwar in Session Trial No. 241/03 in Case Crime No. 150 of 1997 whereby he convicted and sentenced the accused u/s 216/34 I.P.C. and 4/5 Explosive substance Act & 151/34 of Railway Act to the period already undergone by him in jail.

Brief facts for the disposal of this appeal are that an F.I.R. was lodged in the police Station GRP Laksar on 24.07.1997 by the Station Master alleging therein that 24.07.1997 at about 1:45 pm. he got the information that in between the railway station Chakrajmal and Suohara there is a bomb blast in 3010 Doon Express. On the information, the police party reached at the Suohar Station and inquired about the said explosion. It was revealed by the passengers therein that when the train started from Dehradun, an unknown person came in the said coach alongwith the briefcase. He kept the briefcase inside the seat and tied it with a chain alongwith the seat. When the other passengers inquired about that unknown person, he stated that he also belong to the Army and he is going alongwith them. When the train started from the Station, the said unknown person did not come in the boggy. The said coach in which the explosion took place had the passengers who belong to the Indian Army. When the said train left the Chakrajmal station then the

explosion took place in the said boggy. People saw that smoke was coming from the said briefcase. The Army persons who were sitting in the said coach tried to throw out the said briefcase but they could not succeed to their effort because the suitcase was tied with the said seat. Then one of the Army persons sitting in the compartment kicked the said briefcase and it was opened by the said kick and the said briefcase was thrown outside the compartment. Thereafter, a goods train was coming behind the said train in which few Army persons were sitting and the said goods train stopped at the place of the incident and passengers saw inside the said briefcase some explosive articles. The said briefcase was taken into the custody by the police personnel.

Thereafter the police started the investigation in this matter. The prosecution has further stated that another case was registered on 30th July, 1998 u/s 121/12A/112 I.P.C. and 4/5 Explosive Act and 18 Foreigner Act 1948 in the railway station, Delhi. While making the investigation of that case, the Delhi Police arrested the respondent-accused. The Investigating Officer of Delhi case informed the Investigating Officer of the present case that accused Mohd. Saied @ Abdul Sattar had been lodged in Tihar Jail and he was also involved in the Case Crime No. 150 of 1997 of Hardwar. The Investigating Officer of Hardwar went to Delhi and he recorded the statement of the present accused-respondent as well as the other witnesses and he filed the chargesheet before the A.C.J.M. Roorkee, Haridwar.

Thereafter the accused-respondent was produced before the court under the orders of the Magistrate. The case was committed to the Court of Sessions and the learned Sessions Judge framed the charges u/s 4/5 Explosive Substance Act, u/s 216/34 I.P.C. & 151/34 of Railway Protection of Property Act.

The accused denied the charges and claimed the trial.

Thereafter, the matter was listed for the prosecution evidence on 04.03.2004. During the trial the appellant filed an application

before the learned Sessions Judge for recording his plea of guilt and he further prayed in the application that his plea of guilt be accepted and he may be released by awarding the sentences for the period already undergone. The learned Session Judge recorded the confessional statement of the accused on 09.03.2004 and sentenced him to undergo punishment for a period already undergone in the jail.

Feeling aggrieved by the said judgment and order, the State had preferred this appeal for the enhancement of the sentence on the ground that the punishment is inadequate and disproportionate also.

I have heard learned counsel for the parties and perused the record.

Before proceeding with the contention of the parties, It would be appropriate to quote the provisions of the Section 4 and 5 of the Explosive Substance Act, 1908 which are as under:-

> *4.* ***Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property. –*** *Any person who unlawfully and maliciously,-*
>
> *(a) does any act with intent to cause by an explosive substance or special category explosive substance, or conspires to cause by an explosive substance or special category explosive substance, an explosion of nature likely to endanger life or to cause serious injury to property; or*
>
> (b) *Makes or has in his possession or under his control any explosive substance or special category explosive substance with intent by means thereof to endanger life, or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property in India.*

Shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be published,-

(i) in the case of any explosive substance, with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(ii) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

5. ***Punishment for making or possessing explosive under suspicious circumstances. –*** *Any person who makes or knowingly has in his possession or under his control any explosive substance or special category explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall unless he can show that he made it or had it in his possession or under his control for a lawful object, be punished.*

(a) in the case of any explosive substance, with imprisonment for a term which may extent to ten years, and shall also be liable to fine;

(b) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

An has been indicated above, the provision of Section 4 and 5 clearly reveals that the sentence of imprisonment as well as the sentence of fine are mandatory in the provision. The word 'or' is not provided in between both the sentences but the word' and' has been provided as such the learned Sessions Judge awarded the sentence

of imprisonment only and the learned Sessions Judge had not awarded the sentence of fine to the accused-respondent.

Learned Addl. G.A. contended that the trial court had erred in awarding the meager punishment under the provisions of the Explosive Act. The trial court should have consider the gravity of the offence and should not have awarded the meager sentence without considering how much time the accused had spent in the jail. It was further contended that the learned trial court was not justified in awarding meager sentence for the serious crime committed by the accused-respondent. The crime committed by the respondent was a very serious nature and it was against the security of the nation. The learned Addl. G.A. further contended that the plea of guilt has been recorded on the basis of the plea of the bargain. It was further contended that the learned trial court should not have considered the plea of bargain at the time of the passing the sentence. The perusal of the record reveals that when the case was fixed for the prosecution evidence, an application was filed by the respondent to record the plea of guilt along with the prayer that the plea should be accepted and he should be released only on the period which he had spent in the jail. Thereafter, the learned Sessions Judge immediately recorded his statement u/s 313 Cr.P.C. Clause 1 (a) and the accused-respondent pleaded his guilt and immediately thereafter the learned Sessions Judge passed the composite conviction order in which he had convicted the respondent as indicated above. As a matter of fact, the learned Sessions Judge should not had accepted the plea of bargain which is not recognized in law and is against the public policy in the criminal justice system. The criminal procedure Code does not recognize such plea of bargain. The court only recognizes the compounding of certain offences with the permission of the court and in certain events without permission of the court. Except the above, the concept of negotiated settlement in criminal cases is not permissible. This method of short circuiting the hearing and deciding

the criminal cases involved serious offence requires no encouragement. Neither the State nor the public prosecutor nor even the Judge can bargain that evidence would not be led or appreciated in consideration of getting fleabite sentence by pleading guilty. The court should decide the cases on merit. It is not for the court either it is going to be acquitted or it is going to be convicted when even if the plea have been recorded, the court should not have been influenced by the plea of bargain, the court should pass the appropriate sentence which is required in the matter, While awarding the sentence, the court had to see whether the sentence which has been inflicted, is the requirement of the law and it reflects the need of the society. The court had to make a balance while awarding the sentence. The approach of the court while awarding the sentence should be as such if a prudent person feels in the circumstance of the case that a Judge had passed the appropriate Sentence in the case which reflects the need of the society. The Judges and the Justice delivery system cannot be isolated from the society. The court While awarding the sentence should consider the evidence on record connecting the accused with the crime and the nature of the crime and also the court's conscience must be satisfied before passing the final order that the conviction commensurate with the crime committed by the accused. Mere acceptance or admission of the guilt should not be a ground for reduction of sentence nor can the accused bargain with the court that as he is pleading guilty the sentence be reduced. It is evident from the record that the application filed by the accused clearly reveals that he only wanted to record his plea of guilt on the condition that if he would be released only on the sentence of already undergone. The judgment of the learned Sessions Judge also reflects that he accepted it by pronouncing the sentence of his choice. It is also well settled principle of law that on the basis of the plea of bargaining the court cannot dispose of a criminal case, the court should decide it on merit.

The learned Sessions Judge while recording the conviction had ignored the mandatory provisions of the criminal procedure code. Section 235 (2) provides a general rule after recording the conviction. The trial court should call upon both the parties, i.e., prosecution as well as defence on the question of sentence then the State would have an opportunity to say what was the appropriate sentence in the matter and whether the sentence which the trial court was going to award was appropriate or adequate or not. The learned Sessions Judge had not give any opportunity either to the defence or to the prosecution on being heard on the point of sentence. This further fortifies the argument of the learned Addl. G.A. that the court was pre-determined to accept the plea of bargain and release him on the meager punishment. I find force in the arguments of the learned Addl. G.A..

Perusal of the entire record reveals that the learned Sessions Judge had dealt the matter in a very light manner. Of course the learned Sessions Judge dealt the question of sentence in a cryptic manner and also pronounced the order of the conviction without affording any opportunity to the parties for hearing on the part of sentence. I disapprove the manner in which he decided the case and passed the sentence in a cryptic manner in such serious case. It exposes lack of sensitiveness on his part while dealing with the question of sentence. I need say no more on the topic so far as the learned Sessions Judge is concerned.

Now the question arose what should be the appropriate course in this matter. The Hon'ble Apexd Court in **Ganeshmal Jashraj Vs. Govt. of Gujrat and another reported in 1980 SCC (Cri) p/239** wherein it has been held that the appellant was charged before the Judgicial Magistrate u/s 71/16 of the Food Adulteration Act for selling adulterated turmeric powder. The appellant pleaded not guilty to the offence charged against him. Thereafter, the prosecution evidence was recorded and the statement of the accused was recorded u/s

313 Cr.P.C. and on the same day he presumably as a result of plea of bargaining, the accused submitted an application admitting his guilt alleging therein that he was a poor man and this was his first offence so leniency should be shown to him and the Magistrate thereupon convicted the appellant and sentenced him to suffer simple imprisonment till the rising of the court and a fine of Rs. 300/- or in default to suffer further rigorous imprisonment for one month. The High court of Gujrat on an anonymous application treated that application to be revision petition and passed a *suo motu* order in exercise of the revision jurisdiction after issuing the notice to the appellant for enhancing the sentence and enhanced the sentence and convicted him for a minimum period of three months. Felling aggrieved by the said judgment, an appeal was preferred before the Apex Court, the Apex Court set aside the conviction and remanded the case to the Judicial Magistrate with the direction to proceed further from the stage of examination u/s 313 Cr. P.C. and dispose of the case on the basis of the evidence led on behalf of the prosecution and if defence chooses to lead any evidence in defence and without being influenced by the admission made by the accused. This aspect was again considered by the Hon'ble Apex Court in **Thippeswamy Vs. State of Karnataka reported in AIR 1983 SC p/774.** In the instant case, the Magistrate on the plea of bargain convicted the accused and sentenced him for fine for Rs. 1000/- u/s 304-A. Thereafter the appeal was preferred before the High Court and the High Court maintained the sentence of fine and additionally imposed a substantive sentence of rigorous imprisonment for a period of one year. The present appeal was preferred by the appellant against the judgment of the High Court. The Hon'ble Apex Court allowed the appeal and set aside the conviction and sentence and remanded the case to the trial court so that the accused can be tried in accordance with law and if he wishes to defend himself against the charge, he should have proper and adequate opportunity to do so. The same

principle has been followed in **State of Uttar Pradesh Vs. Chandrika reported in (1999) 8 SCC 638.**

In view of the above discussion, I allow the appeal and set aside the conviction and sentence passed by the learned Sessions Judge against the accused-respondent. The matter is remanded to the learned Sessions Judge with the direction to proceed further from the state of charge and dispose of the case on the basis of the evidence led on behalf of the prosecution and defence evidence without being influenced by the confession made by the accused.

(J.C.S. RAWAT, J.)

26TH April, 2006

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